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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION W.P.(S) No. 1501 of 2007

PETITIONER : Bhartendra Bhushan Tripathi S/o Shri Haldhar Prasad Tripathi aged about 30 years, Residence of Ward No. 9 Dharmshala Marg (Beside Murli Jewelrs) Sarangarh, Tahsil Sarangarh Dist. Raigarh (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh, through Secretary of the General Administration Department D.K.S. Bhawan, Mantralaya, Raipur (C.G.)

2. Chhattisgarh Public Service Commission, Through its Chairman Raipur District Raipur (C.G.)

Present: Shri Rewa Shankar Patel, Advocate for the petitioner.
Shri Vinay Pandey, Panel Lawyer for the State/respondents.

ORDER
(Passed on 14th March, 2007)

1. By this petition, the petitioner seeks for a writ in the nature of mandamus/direction to the respondents to scale the answer

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sheets of the petitioner and declare the result thereafter. It is further sought that the respondents be directed to comply with the provisions of Clause 38 of the circular issued by the Chhattisgarh Public Service Commission (Annexure P/5) wherein, it is provided that in the State Service Preliminary Examination, 2005 and Main Examination 2005, valuation of optional subjects scaling system would be made applicable and the marks would be awarded on scale.

2. The facts in nutshell are that the petitioner, alongwith others, applied for appointment in State Services. The petitioner appeared in the preliminary examination conducted by Chhattisgarh Public Service Commission, (for short, C.G.P.S.C.) held on 6.11.2005 and on the basis of result of the preliminary examination, the petitioner appeared in the main examination held from 15.06.2006 to 27.7.2006 and 30.06.2006. The result was declared on 31.01.2007. The petitioner was unsuccessful in the main examination. The petitioner has filed this petition challenging the result of the main examination declared on 25.01.2007 on the ground that scaling system has not been done, as according to the newspaper report, the scaling was not possible within a period of two days. The Chairman, C.G.P.S.C., in his interview, has declared that the result was declared after applying scaling system. Learned counsel appearing for the petitioner submits

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that on 25.01.2007, it was reported in the news paper that the result could not be declared on account of non-completion of scaling work and thereafter, the result was declared on 31.01.2007 after scaling. According to him, this is practically impossible to complete scaling within such a short period as there were 9736 answer sheets. The interview is to be held in the month of March 2007.

3. It appears that the entire petition is based on certain news paper reports which have no basis to support the contention of the petitioner that the scaling of the answer sheets was not possible within such a short period. Learned counsel appearing for the petitioner has not pointed out asto how many experts in scaling works were involved, how many answer sheets were scaled in one hour and how much work they have performed. In absence of the above materials, it is not possible to issue a writ in the nature of mandamus as sought for by this petition in this sketchy petition without having relevant and sufficient materials.

4. The petitioner has obtained the marksheet of the main examination under the provisions of Right to Information Act. The marksheet itself indicates that the scaling was done and the marks were allotted on scale. It is well settled that a candidate on finding himself as unsuccessful in the

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examination, cannot raise the dispute with regard to procedure adopted in the examination.

5. In the case of Chandra Prakash Tiwari & Others v Shakuntala Shukla & Others, (2002) 6 S.C.C. 127, t Supreme Court held as under:-

"32.....It is a remedy which stands barred and it is in th perspective in Om Prakash Shukla v. Akhilesh Kumar Shuk a three-Judge Bench of this Court laid down in no uncerta terms that when a candidate appears at the examinati without protest and subsequently found to be not successful the examination, question of entertaining a petitic challenging the said examination would not arise."

"33. Subsequently, the decision in Om Prakash stan followed by a later decision of this Court in Madan Lal State of J&K wherein this Court stated as below: (SCC p. 49 paras 9-10)

"9. Before dealing with this contention, we must keep in vie the salient fact that the petitioners as well as the contestin successful candidates being respondents concerned hereir were all found eligible in the light of marks obtained in th written test, to be eligible to be called for oral interview. Up t this stage there is no dispute between the parties. Th petitioner also appeared at the oral interview conducted by th members concerned of the Commission who interviewed th petitioners as well as the contesting respondents concerned Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of thei combined performance both at written test and oral interview

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they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

6. In view of the dicta laid down by the Supreme Court, this petition is not entertainable as the petitioner has appeared in the examination and he having failed in the main examination, questions the non-application of scaling system which is evident from the fact that declaration of result was delayed as admitted by the Chairman, C.G.P.S.C. on account of time consumed in the process of scaling of the answer-sheets. The marksheet obtained by the petitioner under the Right to Information Act clearly indicates application of scaling system.

7. In view of foregoing and for the reasons stated hereinabove this petition is dismissed, summarily. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

Amit